

OFFICE OF THRIFT SUPERVISION

Approval Of Application For Permission To Organize A Federal Savings Bank

Order No.: 2003-60
Date: November 28, 2003
Re: OTS No. 17963

J. P. Morgan Chase & Co., New York, New York (Holding Company) has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1464(e) and 12 C.F.R. § 552.2-1 to organize Chase FSB, Wilmington, Delaware (Savings Bank), as a federal savings bank (the Application). The Savings Bank will be a member of the Savings Association Insurance Fund.

The Proposed Transaction

The Holding Company proposes to establish and operate a *de novo* federal savings association, the Savings Bank. The Savings Bank will not take deposits, with the exception of intercompany deposits of approximately \$500,000 (from affiliates), as required for Federal Deposit Insurance Corporation (FDIC) insurance. The Savings Bank intends primarily to originate, process, underwrite, fund, and close first- and second-lien residential mortgage loans throughout the United States, except in New York, New Jersey and Connecticut, and to engage in certain other lending and marketing activities.

The Holding Company will capitalize the Savings Bank with \$1 billion in cash and affiliates of the Holding Company will transfer approximately 302 loan production offices and administrative offices, plus certain other assets and liabilities, to the Savings Bank.

Permission to Organize Application

The Home Owners' Loan Act (HOLA) provides that OTS may grant a federal savings bank charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity exists for such association in the community to be served; (iii) if there is a reasonable probability for the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions. OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.

In addition, OTS' regulations regarding the establishment of *de novo* federal savings associations (Regulation) sets forth standards that OTS considers in granting a *de novo* federal charter. The Regulation sets forth policies regarding: (i) initial capitalization of the federal savings

bank; (ii) the submission of a business plan (including submission of a Community Reinvestment Act (CRA) statement); and (iii) the residence and composition of the savings bank's board of directors.

Further, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal thrift charter must submit with its application a description of how it will meet its CRA objectives. OTS is required to take this description into account when considering the application and may deny or condition approval on CRA grounds.

With respect to character and responsibility, routine background checks were completed on the proposed directors and senior executive officers for the Savings Bank, and no material adverse information was disclosed. Proposed management will consist of individuals who are currently employed by the Holding Company or its affiliates. OTS considered the backgrounds and experience of proposed management, and considered regulatory examinations of the banking entities associated with the individuals proposed for management, and concludes that the officers and directors of the Savings Bank have the experience to operate a savings association. The Holding Company is considered to be in overall satisfactory condition, and its examination ratings are consistent with approval. Thus, OTS concludes that this approval criterion is satisfied.

As for the necessity for the Savings Bank in the community and undue injury to properly conducted existing local thrift and home financing institutions, the Savings Bank will continue the existing mortgage business and other business of certain affiliates. The existence of these sizable operations demonstrates a necessity for these services, and the continuation of these existing operations should have no effect on other home financing institutions. Accordingly, OTS concludes that this approval criterion is satisfied.

With respect to the reasonable probability of usefulness and success, OTS reviewed the Savings Bank's financial condition, business plan, proposed capital levels, and the competence of proposed management. With respect to capital, the Savings Bank plans to be well capitalized throughout its first three years of operations. OTS concludes that the Savings Bank will have capital sufficient for its proposed level of operations. OTS concludes that the Savings Bank's business plan is acceptable. As discussed above, OTS concludes that the proposed officers and directors of the Savings Bank have sufficient experience to operate a savings association. Based on the above, OTS concludes that the Savings Bank's probability of usefulness and success is consistent with approval, subject to the imposition of the conditions below, which are intended to help ensure that the Savings Bank operates in a safe and sound manner.

With respect to the provision of credit for housing, the Savings Bank will extend credit for housing within its market area and in the national market. The Savings Bank's business plan projects substantial residential mortgage lending, and that the Savings Bank will meet its Qualified Thrift Lender requirements. The Savings Bank's proposed management is well qualified to operate a savings association. Accordingly, OTS concludes that the Savings Bank will provide credit for housing in a safe and sound manner.

OTS regulations require that a majority of a *de novo* association's board of directors be "representative" of the state in which the association is located. Most of the Savings Bank's proposed directors do not reside or work in the state in which the Savings Bank will be located. OTS regulations, at 12 C.F.R. § 500.30(a), provide that OTS may waive the applicability of any regulation for good cause, to the extent permitted by statute. The regulatory requirement under section 543.3(d)(1) is not set forth in any statute. OTS concludes that there is good cause to waive the section 543.3(d)(1) requirement because the directors are persons with considerable banking experience, and because a board of directors with members who are representative of several states and with varied business experience is appropriate, given the Savings Bank's proposed national operations. Accordingly, OTS hereby waives this requirement.

OTS regulations also require that a *de novo* association's board of directors be diversified and composed of individuals with varied business and professional experience. Based on the residency and varied experience of the Savings Bank's proposed directors, OTS concludes that the Savings Bank's proposed board of directors meets these criteria.

With respect to the CRA and OTS' CRA regulations, the Savings Bank's CRA assessment area will consist of the Wilmington-Newark, Delaware-Maryland Metropolitan Statistical Area. The Savings Bank's CRA lending performance will be based on mortgage lending in this assessment area and in its major mortgage markets nationwide. In addition, the Savings Bank will make qualified investments in, and provide grants to local community development organizations and to large regional and national organizations that provide CRA eligible activities in, the Savings Bank's primary mortgage markets. Also, the Savings Bank will seek community development services opportunities in the assessment area. OTS concludes that the Savings Bank has satisfactorily demonstrated that it will meet its CRA objectives.

Public Comments

OTS regulations, at 12 C.F.R. § 552.2-1(a), require publication of a notice to organize a federal savings association. Notice of the proposed transaction was published on August 1, 2003. On August 25, 2003, OTS received a letter from Inner City Press/Community on the Move (ICP) requesting a copy of the application and requesting that the comment period be extended. ICP subsequently filed with OTS six comment letters regarding the application and two other organizations, California Reinvestment Committee and Mason Square Community Development Corporation, filed comment letters, all of which were received after the close of the public comment period. OTS concludes that the comment letters do not meet the standard for consideration of late-filed comments, set forth at 12 C.F.R. § 516.140(b).

Transactions With Affiliates

The proposed transaction includes certain "covered transactions" within the scope of OTS' Transactions with Affiliates Regulation, 12 C.F.R. § 563.41, which requires compliance with Sections 23A and 23B of the Federal Reserve Act and the Federal Reserve Board's implementing regulations at 12 C.F.R. Part 223, Regulation W. The Savings Bank proposes to receive the assets

and related liabilities for 302 loan production and administrative offices from an affiliated national bank and from a state-chartered affiliated mortgage company. Pursuant to 12 C.F.R. § 223.42(i), asset purchases by a newly formed member bank are exempt from the quantitative limits of sections 223.11 and 223.12, the collateral requirements of section 223.14, and the prohibition on the purchase of a low quality asset of section 223.15, (but are subject to the safety and soundness requirements of section 223.13), provided that the appropriate federal banking agency must approve the asset purchase in writing in connection with its review of the formation of the member bank or savings association. OTS has specifically reviewed the asset and liability acquisitions from affiliates and approves these transactions.

Conclusion

OTS has considered the Application under the standards set forth in 12 U.S.C. § 1464(e) and 12 C.F.R. §§ 543.3 and 552.2-1(b), and under the Community Reinvestment Act, 12 U.S.C. §§ 2901, et seq., and the OTS regulations thereunder, 12 C.F.R. Part 563e. OTS finds that the Application satisfies the applicable approval standards (other than the standard set forth at 12 C.F.R. § 543.3(d)(1), which, as discussed above, has been waived), provided that the following conditions are complied with in a manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the Application is hereby approved, subject to the following conditions:

1. The Holding Company and the Savings Bank must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Holding Company and the Savings Bank must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of the Holding Company and the Savings Bank, respectively, as disclosed in the Application. If additional information having a material adverse bearing on any feature of the Application is brought to the attention of the Holding Company, the Savings Bank, or OTS since the date of the financial statements submitted with the Application, the transaction shall not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
4. The Holding Company and the Savings Bank must, within 5 calendar days after the effective date of the proposed transaction: (a) advise the Regional Director in writing of the effective date of the proposed transaction and of the Savings Bank's insurance of accounts; (b) advise the Regional Director in writing that the

transaction was consummated in accordance with all applicable laws and regulations, the Application and this Order; and (c) provide a reconciliation of the Savings Bank's capital to the Regional Director;

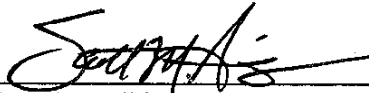
5. The Savings Bank must submit independent audit reports to the Regional Director for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
6. The Savings Bank must operate within the parameters of its three-year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan for the prior written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days before the desired implementation date, with a copy sent to the FDIC Regional Office;
7. For three years following commencement of operations, the Savings Bank must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any deviations;
8. A majority of the Savings Bank's board of directors must not be individuals who are directors or employees of any affiliate of the Savings Bank that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate);
9. The Savings Bank is prohibited from sharing common senior executive officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as the nature of the interlock, regulatory compliance, experience, character, integrity, the ability to perform both duties and the availability of necessary expertise through other sources;
10. During the first three years of operations, any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director for his written non-objection at least 30 calendar days prior to their execution and implementation;
11. The Savings Bank must submit any plans to participate in an auto finance securitization arrangement to the Regional Director for his written non-objection at least 60 calendar days prior to implementation; and

12. The Savings Bank must submit a tax sharing agreement to the Regional Director for his written non-objection within 90 calendar days of the date of this Order.

Any time period set forth herein may be extended for up to 120 calendar days, for good cause, by the Regional Director.

By order of the Director of the Office of Thrift Supervision, or his designee, effective

November 28, 2003



Scott M. Albinson
Managing Director
Office of Supervision